

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
<u>Compensation Regime</u>	)	

**COMMENTS OF ACS OF ANCHORAGE, INC.**

**A. Introduction**

This proceeding arises from identified abuse of the Commission's intercarrier compensation rules by various competitive local exchange carriers. This abuse was possible because of "the opportunity, under the current regime, for profit-seeking behavior to take advantage of cost or revenue disparities that are solely due to regulation."<sup>1</sup> In response, the Commission has taken steps in separate proceedings to curtail future manipulation of these compensation mechanisms for ISP-bound traffic<sup>2</sup> and for terminating access<sup>3</sup> by such carriers.

The Commission, however, has observed that these problems may be symptomatic of broader concerns arising under the existing intercarrier compensation structure. Accordingly, it has undertaken here "a fundamental re-examination of all currently regulated forms of intercarrier compensation."<sup>4</sup> Such a proceeding will have a much wider impact than mere ISP-related and terminating compensation for CLECs, since federally regulated intercarrier compensation

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<sup>1</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, (rel. April 27, 2001) at ¶ 133 ("Intercarrier Compensation Notice").

<sup>2</sup> *In the Matter of Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order (rel. April 27, 2001)("ISP-Bound Compensation Order").

<sup>3</sup> *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive local Exchange Carriers*, CC Docket No. 96-262, Seventh report and Order, FCC 01-146 (rel. April 27, 2001) ("CLEC Access Charge Order").

<sup>4</sup> *Intercarrier Compensation Notice* at ¶ 1.

includes access charges. Access charges are a significant source of revenue to the local exchange industry. Any alteration or termination of the current access charge regime portends radical shifts in revenue flows between and among all segments of the industry. This, in turn, will materially impact infrastructure investment, scope and quality of service to consumers, and prices paid by consumers for basic service.

ACS of Anchorage, Inc., together with its affiliated incumbent local exchange carriers (collectively, “ACS”),<sup>5</sup> operates local exchange facilities serving 320,000 customers in the State of Alaska. Approximately half of ACS’ customers are located in the singular major urban area of Alaska, Anchorage (population [275,000]). The rest are scattered throughout the rural areas of the state. ACS of Anchorage, Inc. is a midsize telephone company.<sup>6</sup> Its affiliated ILECs are all rural telephone companies.<sup>7</sup> The ACS ILECs are, further, part of a larger telecommunications enterprise which includes substantial CMRS and Internet service provisioning.<sup>8</sup> Collectively, ACS typifies the continuing evolution of telecommunications carriers toward diversified and expanded service platforms and service offerings in the post-1996 Act era.

ACS concurs in many of the matters raised by the Commission in the Notice for this proceeding. But in the context of potentially material structural changes to intercarrier compensation, many of the issues raised warrant especially careful consideration for midsize and

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<sup>5</sup> ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc.

<sup>6</sup> 47 U.S.C. §251(f)(2): “ A local exchange carrier with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide....” ACS is a member of the Independent Telephone & Telecommunications Alliance (ITTA), which is filing separate “Comments” concurrently in this proceeding. ACS has participated in the formulation of those ITTA Comments and fully supports the views expressed therein.

<sup>7</sup> 47 U.S.C. §153(37).

<sup>8</sup> ACS Wireless and ACS Internet. These entities, together with the ILECs identified above, are owned by Alaska Communications Systems Group, Inc., a publicly traded company (NASDAQ: ALSK).

rural companies who, because of location, demographics, and other considerations are disproportionately impacted by such changes and have fewer alternatives (internal or external) for dealing with such changes. The comments offered by ACS in this proceeding reflect the multi-dimensional nature of its business activities and its primary concern for the effects of any change on its customers.

**B. The Notice presents significant challenges in the context of Alaskan service.**

The Commission, as its past orders reflect, is no stranger to the unusual conditions attending service to and within the State of Alaska.

The Joint Board recommended that, because of the unique circumstances faced by rural carriers providing service in Alaska and insular areas, those carriers should not be required to shift to support mechanisms based on the forward-looking economic cost at the same time that other rural carriers are so required. The Joint Board noted that carriers ... serving Alaska have limited construction periods and serve extremely remote rural communities.<sup>9</sup>

The relative geographic isolation of the state, its weather, short construction season, scattered population centers, and limited economic foundations conspire both to increase the dependency of the state upon telecommunications and to exacerbate the difficulties in meeting the state's telecommunications needs.

Alaska has had to depend historically on outside assistance to develop and maintain its telecommunications infrastructure. Until the early 1970s, communications between Alaska and the rest of the nation was largely government provided.<sup>10</sup> Local exchange service was primarily

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<sup>9</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order (rel. May 8, 1997) at ¶ 314.

<sup>10</sup> The original "Alaska Communications System" was operated by the Department of Defense and arose from military command and control needs in the post-World War II era.

confined to the larger urban and semi-urban areas, and was frequently municipally owned and operated.<sup>11</sup>

This condition changed in the mid-1970s, when federal rate integration policies brought about network access between Alaska and the Lower-48, in the form of satellite-based long lines provisioning by the RCA Corporation.<sup>12</sup> Equally important, rate integration brought access to the separations and settlements process then obtaining between the Bell System and independent telephone companies. The ability of Alaskan local carriers to draw on these financial resources, which were later replaced in the early 1980s by the current access charge resources, made possible the implementation and expansion of basic universal exchange service throughout all areas of the state. These two factors – access to interstate long lines service and access to interstate revenue flows – authored then and maintain now the underpinnings for local service throughout most of Alaska.

**C. ACS does agree with the FCC on many of the matters set out in the Notice, but believes others require further consideration.**

ACS agrees that the current regime reflects a “patchwork of intercarrier compensation rules.”<sup>13</sup> This patchwork has proved conducive to abuse (arbitrage and more), which ILECs and their customers frequently bear the brunt of. To some degree, the problems stem from the

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<sup>11</sup> For example, ACS of Anchorage, Inc. was previously owned and operated by the Municipality of Anchorage as Anchorage Telephone Utility (ATU). Similarly, ACS of Fairbanks, Inc. was previously the telecommunications segment of the Fairbanks Municipal Utilities System (FMUS).

<sup>12</sup> See, e.g., *In the Matter of Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska, and Puerto Rico/Virgin Islands*, Memorandum, Order and Authorization, W-P-C-710 (rel. July 20, 1976) 1976 WL 31472.

<sup>13</sup> *Inter-carrier Compensation Notice* at ¶ 11.

unexamined intersections and interstices of rules which were not consistently developed, but rather reflect discreet lines of regulatory development focusing variously on types of carriers, types of services, or types of technologies. Rapidly evolving technology and consumer demands have undercut the factual foundation for such a “stovepipe” approach to regulation.<sup>14</sup> As a result, the historical levels of regulatory intervention engaged in by the Commission are also increasingly undermined.

Given this change in fact, ISP-bound arbitrage and terminating access abuses are not unique, isolated events but rather the logical result of overly complex, overly particularistic holdover regulations. Substituting new complex regulations for old complex regulations is unlikely to advance market development and consumer welfare, and will more likely merely promote new forms of arbitrage and gamesmanship. Diminished regulation and regulatory intervention, therefore, should be a major goal for this proceeding.

The Notice appears to acknowledge this fact in seeking to determine a new course of reduced regulatory intervention.<sup>15</sup> ACS believes enforcement, rather than intervention, is better in the long run and concurs with the recently expressed views of Chairman Powell on this matter:

- We will harness competition and market forces to drive efficient change and resist the temptation, as regulators, to meld markets in our image or the image of any particular industry player....
- We will validate regulations that constrain market activity that are necessary to protect consumers, or we will eliminate them.

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<sup>14</sup> ACS, a member of the United States Telecommunications Association (USTA), notes to the Commission’s attention and concurs in the USTA analysis concerning drivers for change, set out in Section II of the USTA “Comments” being concurrently filed in this proceeding.

<sup>15</sup> *Id.* at ¶ 34: “It also seems appropriate to consider the degree of regulatory intervention required to implement various interconnection regimes. Some regimes require extensive regulatory intervention, while others are more market-oriented and thus largely self-administering. Market-oriented solutions may provide more timely adjustments and avoid distortions resulting from incorrect or outdated regulatory decisions. They may also avoid substantial litigation costs.”

- We will be skeptical of regulatory intervention absent evidence of persistent trends or clear abuse, but we will be vigilant in monitoring the evolution of the nascent markets.<sup>16</sup>

Moreover, this concept of reduced regulation should not be confined just to the end game. Additionally decreasing active regulation on the road to any new intercarrier compensation paradigm will both promote achievement of the ultimate goals as well as expand consumer benefits during the process toward those goals. ACS notes that the RTF<sup>17</sup> and MAG<sup>18</sup> plans reflect such flexibility in the process for achieving pro-consumer goals, as well as in the final goals themselves. The Commission should adopt a similar course in this proceeding.

The Notice touches upon, but does not adequately develop, the implications of the competing, disparate regulatory cost definitions currently at work in intercarrier compensation. ACS' rural LECs, as rural telephone companies, are subject to modified embedded cost (at least for the next five years) with respect to federal universal service funding. Both the ACS rural LECs and ACS of Anchorage, Inc., which is neither a rural telephone company nor a price cap company, will be impacted by the results of the MAG proceeding, when known. All ACS ILECs must utilize book costs for intrastate rate-making purposes.<sup>19</sup> ACS of Anchorage, Inc. and rural

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<sup>16</sup> *Opening Statement of Michael K. Powell, Chairman Federal Communications Commission, Before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce*, (Washington, D.C. March 29, 2001) at 2.

<sup>17</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 01-157 (rel. May 23, 2001).

<sup>18</sup> See *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers, and Interexchange Carriers*, Report and Order, CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001).

<sup>19</sup> A.S. 42.05. 42.05.441(b): "In determining the value for rate-making purposes of public utility property used and useful in rendering service to the public, the commission shall be guided by acquisition cost or, if lower, the original cost of the property to the person first devoting it to public service, less accrued depreciation, plus materials and supplies and a reasonable allowance for cash working capital when required."

telephone companies ACS of Fairbanks, Inc. and ACS of Alaska, Inc., however, are now subject to competitive entry (by state commission order) and must utilize forward looking economic costs (FLEC) for pricing unbundled network element and interconnection to competitors. As a result, ACS' end user rates are determined on one cost basis (book), while competitors can sell to those same end users using UNEs priced on a different basis (FLEC). Opportunities for arbitrage and abuse exist in this circumstance, no less than the ones identified by the Commission in this proceeding. Adjustments to the existing access charge structure can further exacerbate this problem by increasing the cost burden on end users.

ACS supports the Commission's focus on encouraging infrastructure investment as a goal of this proceeding. In "seek[ing] an approach to intercarrier compensation that will encourage efficient use of, and investment in, telecommunications networks"<sup>20</sup> the Commission correctly recognizes that consumer welfare is maximized through the introduction of new technologies and the innovative services and products they provide. But inducing private investment requires consistent recognition, as well, of the right of private property. Commission policies which do not permit a reasonable opportunity to benefit from past investment will discourage future investment, since a "new" investment today necessarily becomes a "legacy" investment tomorrow. This is particularly true in the present period of rapid technological advance and consequent foreshortened times to obsolescence. Constitutional law<sup>21</sup> as well as sound policy dictate that any change to a new intercarrier compensation regime must reflect appropriate mechanisms for protecting and encouraging private sector investment in infrastructure, past and future.

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<sup>20</sup> *Inter-carrier Compensation Notice* at ¶ 2.

Finally, ACS urges the Commission to give full and continuing attention to the adverse impacts which unifying an intercarrier compensation regime will have on universal service. Universal service is also a principle of the 1996 Act and requires the same time and attention in this proceeding being devoted to competition. Access charges are significant sources of revenue for non-BOC companies. This is particularly the case with respect to rural Alaskan LECs. Major shifts in cost burdens now borne by access charges could have profound effects on end user rates, whether intrastate or interstate in character.<sup>22</sup> The economic dislocation resulting from ISP-bound arbitrage is minor compared to the consumer dislocation and harm which termination of the existing access charge structure will cause. In order to avoid severe consumer impacts, any such change must be carefully examined for alternative and less drastic modifications and must be accompanied by transitional mechanisms to ensure that the proposed remedy does not generate a new and greater injury.

**D. ACS will propose specific Alaska factors for consideration in this proceeding.**

Private sector provisioning of telecommunications in Alaska is a relatively recent phenomenon, due largely to federal initiatives and structures which sustain basic and affordable service throughout the state. Alaska is doing what it can to carry its fair share of the burden. In an effort to hold down prices through local competition, the state has opened approximately 2/3 of all access lines to competition; indeed, the state's largest market, Anchorage, is the most competitive in America. In Anchorage, customers can choose among three local service providers and one major reseller. CLEC collocated equipment can access over 95% of the ILEC local loops. Intrastate interexchange markets have been competitive for a decade.

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<sup>21</sup> See, e.g., *Bluefield Water Works & Improvement Company v. P.S.C. of West Virginia*, 262 U.S. 679 (1923); *FPC v. Hope Natural Gas*, 320 U.S. 591 (1944); *Duquesne Light co. v. Barasch*, 488 U.S. 299 (1989).



Notwithstanding this activity, basic exchange service, particularly in rural Alaska, lacks the market depth necessary to sustain affordable, ubiquitous telecommunications without external sources of support, such as universal service and access charge revenues.

Accordingly, ACS will be developing positions on the following areas, among others, for the purpose of formulating specific Alaskan approaches and solutions to intercarrier compensation issues in the course of these proceedings:

- ◇ Identifying the proper cost definitions for Alaskan rates and markets;
- ◇ Identifying appropriate separations treatment in light of Alaskan infrastructure, network usage, scope and scale factors, and other characteristics;
- ◇ Identifying the amount of implicit support in Alaskan access;
- ◇ Identifying specific mechanisms (existing, proposed, or a mix) which would address Alaskan issues from a comprehensive perspective; and
- ◇ Assessing the relatively minimal impacts which any Alaskan-specific solution will have on national markets and policy goals.

Such analysis will ensure that Commission policy formation for intercarrier compensation correctly accounts for the unique attributes of this serving environment.

## **E. Conclusion**

The telecommunications offerings and markets of the ACS affiliates cover the full spectrum of technological, competitive, and universal service conditions implicated by this rulemaking. The Alaskan context of ACS' activities reinforces the need for circumspect analysis of existing intercarrier compensation regimes, and careful forethought for any changes to or replacement of those regimes. ACS expects to work closely with the Commission and other parties to develop

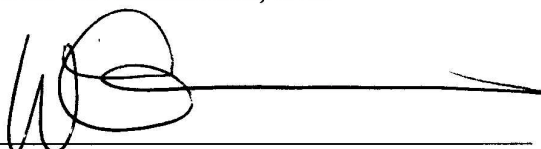
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<sup>22</sup> ASC notes and concurs in the USTA discussion of the dimensions of this problem in its "Comments."

and implement solutions appropriate to the identified problems and to the environment in this state.

Respectfully submitted,

ACS OF ANCHORAGE, INC.

A handwritten signature in black ink, consisting of a stylized 'W' and 'C' followed by a long horizontal line.

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